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OFFICE OF PETITIONS

In re Application of
Frederic FORTIN et al.
Application No. 10/505,469
Filed: August 20, 2004
Attorney Docket No. 09955.0047-00000

DECISION ON PETITION

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed October 23 2007 and supplemental petition filed March 03, 2008, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to reply in a timely manner to the non-final Office action mailed, July 07, 2006, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on October 11, 2006.

The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply in the form of an amendment; (2) the petition fee of \$770; and (3) the required statement of unintentional delay have been received. Accordingly, the reply to the non-final Office action of July 07, 2006 is accepted as having been unintentionally delayed.

An extension of time under 37 CFR 1.136 must be filed prior to the expiration of the maximum extendable period for reply. *See In re Application of S.*, 8 USPQ2d 1630, 1631 (Comm'r Pats. 1988). Since the \$525.00 extension of time fee submitted with the petition on October 23, 2007 was subsequent to the maximum extendable period for reply, this fee is unnecessary and will be credited to petitioner's deposit account.

The power of attorney filed by the assignee on February 06, 2008 has been accepted and made of record.

It is not apparent whether the person signing the statement of unintentional delay was in a position to have firsthand or direct knowledge of the facts and circumstances of the delay at issue. Nevertheless, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay. *See* 37 CFR 10.18(b) and *Changes to Patent Practice and Procedure*; Final Rule Notice, 62 *Fed. Reg.* 53131, 53178 (October 10, 1997), 1203 *Off. Gaz. Pat. Office* 63, 103 (October 21, 1997). In the event that such an inquiry has not been made, petitioner must make such an inquiry. If such inquiry results in the discovery that it is not correct that the entire delay in filing the

required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, petitioner must notify the Office.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-4231.

The application file is being referred to Technology Center AU 3733 for appropriate action on the concurrently filed amendment.

A handwritten signature in black ink, appearing to read "Michelle R. Eason", with a stylized flourish at the end.

Michelle R. Eason
Paralegal Specialist
Office of Petitions